



LEGAL AFFAIRS
1625 NORTH MARKET BLVD., SUITE S 309
SACRAMENTO, CA 95834



Legal Guide K-9

CONSUMERS' RIGHTS TO CANCEL HOME SOLICITATION CONTRACTS

November, 1996

Virtually any consumer transaction in the amount of \$25 or more which takes place in the buyer's home or away from "appropriate trade premises" can be canceled by the buyer, without penalty or obligation, within three business days after the buyer signs the contract. In order to cancel, the buyer must give the seller written notice of the buyer's intent not to be bound by the contract.

This cancellation right is created by the "Home Solicitation Sales Act" (the "Act").¹ The purpose of the Act is to protect consumers against pressure to make an immediate purchasing decision when a salesperson appears at their home. Similar protections apply to most sales by telephonic sellers (see VI. below).²

A buyer's rights under the Act's cancellation provisions are in addition to any other rights the buyer may have to cancel a transaction.³

I. TRANSACTIONS COVERED

Except as discussed at II. below, any contract or offer in the amount of \$25 or more for the sale, lease, or rental of consumer goods or services (or both), which is made at other than "appropriate trade premises," is subject to the Act's cancellation provisions. (The \$25 amount includes interest or service charges.)⁴

A contract or offer that meets all of these criteria, and that does not fall within any of the exceptions described at II. below, is a "home solicitation contract."⁵ The buyer can cancel a home solicitation contract, without penalty or obligation, by giving the seller written notice of cancellation within three business days after the buyer signs the contract.⁶

A. "Appropriate Trade Premises" Explained

"Appropriate trade premises" means the place where the seller normally carries on his or her business, or where goods normally are offered for sale in the course of a business that is carried on at those premises.⁷

A sale made in the buyer's home is the most common situation where the cancellation provisions apply. However, the right to cancel is present when the contract or offer is made anywhere other than the seller's place of business.⁸ The Act also applies when the seller's place of business is not a normal place of business. For example, one court has stated that the cancellation provisions would apply to sales made at a swap meet or in an airplane.⁹

The cancellation provisions have been applied where the buyer called the seller first (for example, in response to an ad).¹⁰ The provisions also have been applied to mass solicitations by telephone from the seller's place of business (a telephone "boilerroom") to the buyers' homes.¹¹

B. "Goods" and "Services" Explained

"Goods" means personal property bought or leased for use primarily for personal, family or household purposes.¹² "Goods" does not include real property.

The term also includes goods which are affixed to real property, and which become a part of it, whether or not they can be removed (for example, where the contract calls for the installation of a furnace).

"Services" refers to any work, labor and services. The term includes the repair, restoration or alteration or improvement of residential premises, and services furnished in connection with the sale or repair of consumer goods. The term also includes courses of instruction.¹³

II. TRANSACTIONS NOT COVERED

The following are the most significant exceptions to the Act.

- A. The sale, lease or rental of a motor vehicle or a mobilehome is not covered.¹⁴
- B. Services provided by a variety of professionals (including lawyers, real estate brokers and salespersons, securities dealers or investment counselors, and physicians) are not covered. The Act also does not apply to the sale of insurance or to financial services offered by most kinds of financial institutions, provided that the insurance or financial services are not connected with the sale of goods or services.¹⁵
- C. Any transaction which is subject to rescission (cancellation) by the buyer under the federal Truth in Lending Act is not covered by the Act.¹⁶ These are transactions that involve a security interest in the buyer's principal dwelling. See Legal Guide K-10 -- "Contracting with a Contractor: The Homeowner's Rights to Cancel" for additional explanation.
- D. Contracts with a licensed contractor for repair services are not covered if all of the following are true: (1) the contract price is less than \$100; (2) the buyer initiated the negotiation; and (3) the contract contains a written and dated statement, signed by the buyer, that he or she initiated the negotiations.¹⁷

III. REQUIRED ORAL DISCLOSURES

Anyone who solicits a sale or order for goods or services at the buyer's residence, either in person or by telephone, must make certain disclosures. Before asking any questions or making any statement other than a greeting, the seller must clearly reveal that the purpose of the contact is to effect a sale, by doing all of the following:

- Identifying himself or herself by name.
- Identifying the trade name of the person or company that he or she represents.
- Identifying the kind of goods or services being offered for sale.
- If the solicitation is in person, showing identification which contains the name of the solicitor, the entity he or she represents, and the address of that entity.¹⁸

IV. REQUIRED WRITTEN AGREEMENT

In this discussion, *italic* type indicates requirements that the seller must meet in order to avoid extending the cancellation period beyond three business days.

In a transaction covered by the Act, the *seller's contract with the buyer (or the buyer's offer to purchase) must be in writing, and must be in the same language as is principally used in the sales presentation* (for example, Spanish). The document *must be dated and signed by the buyer, and must state on the first page the name and address of the seller and the date on which the buyer signed the document*. The document *must contain a conspicuous, statutorily-prescribed notice of the buyer's right to cancel, which must be near the space for the buyer's signature. This notice states:*

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The seller must give the buyer a copy of the contract or offer, and the required Notice of Cancellation forms (see subsection C).¹⁹

C. Notice of Right to Cancel

1. Form of Notice

*The seller must give the buyer duplicate, completed, "Notice of Cancellation" forms which contain a statutorily-prescribed notice which the buyer can use to notify the seller of the buyer's decision to cancel the transaction. These forms must be in the same language as used in the contract. They also must be attached to the contract or offer, and must be easily detachable from it. In addition, at the time the buyer signs the contract or offer, the seller must orally inform the buyer of the buyer's right to cancel.*²⁰

2. Content of Cancellation Form

The Notice of Cancellation form serves a variety of functions. The completed form --

- informs the buyer that he or she may cancel the purchase without penalty or obligation, not later than midnight of the third business day following the date on which he or she signed the contract or offer;

- specifies the end of the period within which the buyer may cancel;
- informs the buyer of the buyer's and seller's rights and responsibilities in the event of cancellation;
- instructs the buyer that, if the buyer wishes to cancel, he or she must sign, date, and mail or deliver the form (or any other written notice of cancellation) to the seller's address; and,
- when transmitted to the seller, notifies the seller that the buyer has decided to cancel the purchase.²¹

See the last page of this Legal Guide for the legally-required notice language.

D. Waiver Generally Not Enforceable

Any waiver by the buyer of the Act's provisions, or any confession of judgment, is void and unenforceable.²²

However, the buyer can waive the Act's protections in a real emergency where the buyer needs the goods or services immediately and cannot wait for the cancellation period to end. All of the following must be true in order for such a waiver to be valid:

- The contract must be for emergency or immediate necessity repairs or services which are necessary for the immediate protection of people or property;
- The buyer, the buyer's agent or the buyer's insurance representative must have initiated the contract; and,
- The buyer must give the seller a separate signed and dated personal statement which describes the situation, and which expressly acknowledges and waives the buyer's right to cancel.²³ The buyer's personal statement must be in the buyer's own handwriting.²⁴

E. Other Protections May Also Apply

Home solicitation contracts or offers for home improvement goods or services often include a lien on real property. These contracts are subject to the Retail Installment Sales Act,²⁵ which may provide buyers additional protection. (For example, if a contract for the sale of home improvement goods includes a security interest the buyer's home, but the goods are not attached to the real property, the Retail Installment Sales Act invalidates the security interest.)²⁶

V. NOTICE OF CANCELLATION AND CANCELLATION PERIOD

A. Notice of Cancellation

If the buyer decides to cancel the transaction, the buyer's notice to the seller must be in writing. The buyer may use the Notice of Cancellation form that the seller has provided (see III.C. above),²⁷ but the buyer is not required to use this form. The buyer's notice to the seller can be a letter, a telegram or even a FAX. The buyer's notice need only be written and express the buyer's intent not to be bound by the contract or offer.

The buyer's notice of cancellation must be sent to the seller at the address specified in the contract or offer. If the notice is given by mail, it is effective when it is deposited in the mail, properly addressed, with postage prepaid.²⁸ If the notice is given by telegram, it must be sent to the seller's address.²⁹

The buyer should keep an exact copy of his or her notice of cancellation. If the notice is given by mail, it should be sent certified with return receipt requested. If given by ordinary mail, the buyer should note the exact date, time and place of mailing on the copy, as well as the names of any witnesses who saw the buyer mail the notice.

B. Cancellation Period

The buyer may cancel the contract or offer until midnight of the third business day after the day on which the buyer signed the document. "Business day" means any calendar day except Sundays and specified holidays.³⁰

Examples:

- If the buyer signs the contract on Monday, the cancellation period ends at midnight on Thursday.
- If the buyer signs the contract on Friday, the cancellation period ends at midnight on Tuesday.

However, if the seller has not complied with all of the requirements described in *italic* type at III. above, the buyer may cancel the contract or offer at any time until three business days after the seller has complied with all of those requirements.³¹ This might be days, weeks or even months later.

VI. RIGHTS AND DUTIES ON CANCELLATION

A. Seller's Rights and Duties

Within 10 days after cancellation, the seller must return

to the buyer any payments made, any evidence of indebtedness (for example, a promissory note), and any goods traded in. The returned goods must be in substantially as good condition as when the seller received them.³²

If the seller has performed any services prior to cancellation, the seller is not entitled to compensation for those services.³³ If the seller has altered the buyer's property, the seller must restore the buyer's property to substantially as good condition as before the services were rendered.³⁴

B. Buyer's Rights and Duties

Often, the seller will have delivered goods to the buyer immediately after the contract was signed. If the seller asks for return of delivered goods within 20 days after the buyer cancels, the buyer must make the goods available to the seller at the buyer's address.³⁵ However, if the seller has failed to return the buyer's payments or property, or has failed to comply with any of the requirements described in *italic* type at III. above, the buyer may keep the goods, and has a lien on them for any recovery to which the buyer is entitled.³⁶

If the seller does not ask for return of the goods within the 20 days, the buyer may keep the goods and not pay for them. The buyer must take reasonable care of the goods in his or her possession both prior to cancellation and during the 20-day period. (During the 20-day period the goods are at the seller's risk.)³⁷

VII. CANCELLATION RIGHTS IN SPECIAL SITUATIONS

A. Sales by Telephonic Sellers

1. Disclosure Requirements

A telephonic seller who solicits the sale or order of goods or services at the buyer's residence must make the oral disclosures described at III.A. above. (For example, the seller must identify the company that he or she represents.)

2. Cancellation Requirements

The law imposes the following notice and cancellation requirements on a telephonic seller when (a) the solicitation involves a contract or offer for the sale, lease or rental of consumer goods or services (or both) in the amount of \$25 or more, and (b) when the transaction does

not fall within one of the exceptions described at II. above.³⁸

At the time that the telephonic seller makes such a solicitation, the seller must orally inform the buyer of all of the following:

- That the buyer can cancel the contract or offer until midnight of the third business day after the day on which the buyer either (a) receives the product ordered, or (b) receives the seller's notice of confirmation of the services ordered.³⁹
- That a written notice of cancellation form will be sent with the product or the notice of confirmation of the services ordered.⁴⁰

If the sale involves the purchase of services, the seller must send the buyer the notice of confirmation and the notice of cancellation forms immediately following the telephonic agreement to purchase the services.⁴¹

The buyer's three-business-day right to cancel begins on the day that the buyer receives the product ordered or the notice of confirmation of the services ordered.⁴²

The telephonic seller must provide the buyer a written notice of cancellation form that must be attached to the product or accompany the notice of confirmation. The requirements for the notice of cancellation are similar to those described in *italic* type at III.C. above.⁴³

B. Sales of Personal Emergency Response Units

1. "Personal Emergency Response Unit" Explained

A "personal emergency response unit" is an in-home transmitter or a two way radio device which is connected to a telephone line through which a monitoring station is alerted to an emergency and emergency assistance is summoned. The device typically is worn by the purchaser.⁴⁴

2. Cancellation Rights; Exceptions

A home solicitation contract or offer for the purchase of a personal emergency response unit may be canceled until midnight of the seventh business day after the buyer signs an agreement or offer to purchase which complies with the requirements described in *italic* type at III. above.⁴⁵

However, the normal three-business-day cancellation period applies if both of the following are true:

- The unit has two or more stationary protective devices which are used to announce intrusion or fire; and,
- The unit was installed by a licensed alarm company

with, and as part of, a home security alarm system.

3. Contract and Notice Provisions

A home solicitation contract or offer for the purchase of a personal emergency response unit must contain notice of the seven-business-day cancellation period specified for those transactions. The contract and notice requirements are nearly identical to those described at III.B. and C. above.⁴⁶

VIII.

GENERAL CONTRACT CANCELLATION RIGHTS

The cancellation rights described above are in addition to any other rights that the consumer-buyer may have to cancel a transaction.⁴⁷ For instance, a buyer may be able to cancel a transaction if his or her consent was obtained through fraud, duress, or undue influence,⁴⁸ or if the bargain fails in some major way through no fault of the buyer.⁴⁹

The most common grounds for canceling (rescinding) a contract are fraud, mistake, undue influence, breach of contract, illegality and unconscionability.

The buyer should contact an attorney or other expert if the buyer thinks that he or she may have one of these grounds for canceling a contract.

IX.

OTHER LEGAL GUIDES ON CANCELLATION RIGHTS

The Department of Consumer Affairs also publishes the following Legal Guides that discuss cancellation rights:

- Legal Guide K-3 -- When You Decide to Improve Your Home
- Legal Guide K-6 -- Consumer Transactions With Statutory Cancellation Rights
- Legal Guide K-10 -- Contracting with a Contractor: The Homeowner's Rights to Cancel.

These Legal Guides can be ordered by writing to DCA Publications, P.O. Box 310 Sacramento, CA 95802 or by calling (916) 323-7239 or (800) 952-5210.

NOTICE: We attempt to make our Legal Guides as accurate as possible as of the date of publication, but they are only guidelines and not definitive statements of the

law. Questions about the law's application to particular cases should be directed to a specialist.

Prepared by:
Senior Staff Counsel, Legal Services Unit

November, 1996

ENDNOTES

Guide to Abbreviations:

B&P = Business and Professions Code

CC = Civil Code

CFR = Code of Federal Regulations

§ = section

§§ = sections

1. CC § 1689.5-1689.13.
2. B&P § 17511.5(e).
3. CC § 1689.6(a).
4. CC § 1689.5(a).
5. See CC § 1689.5.
6. CC § 1689.6(a).
7. CC § 1689.5(b).
8. CC §§ 1689.5(a),(b). See Louis Luskin & Sons v. Samovitz (1985) 166 Cal.App.3d 533 [212 Cal.Rptr. 612].
9. See Louis Luskin & Sons v. Samovitz (1985) 166 Cal.App.3d 533 [212 Cal.Rptr. 612].
10. Weatherall Aluminum Products Co. v. Scott (1977) 71 Cal.App.3d 245 [139 Cal.Rptr. 329].
11. People v. Toomey (1984) 157 Cal.App.3d 1, 13-14 [203 Cal.Rptr. 642, 650]. See B&P § 17511.5(e).
12. CC § 1689.5(c).
13. CC § 1689.5(d); see also CC § 1802.1.
14. CC §§ 1689.5(c).
15. CC § 1689.5(d).
16. 15 USC § 1635; 12 CFR § 226.23; CC § 1689.5(a).
17. CC § 1689.5(a).
18. B&P § 17500.3(a).
19. CC §§ 1689.7(a),(b),(d),(e).
20. CC § 1689.7.
21. CC §§ 1689.7(c),(d).

22. CC § 1689.12.
23. CC § 1689.13.
24. 16 CFR Part 429, Note 1(a)(3).
25. CC § 1689.8; see CC §§ 1801-1812.20.
26. CC § 1804.3; People v. Custom Craft Carpets (1984) 159 Cal.App.3d 676 [206 Cal.Rptr. 12].
27. CC §§ 1689.6(b),(e).
28. CC §§ 1689.6 (c),(d).
29. CC § 1689.7(c).
30. CC §§ 1689.5(e), 1689.6(a). The specified business holidays are: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day Thanksgiving Day and Christmas Day.
31. CC § 1689.7(f).
32. CC §§ 1689.10(a),(b).
33. CC § 1689.11(c); Louis Luskin & Sons, Inc. v. Samovitz, *supra*, at 537-538 [614-615]; Weatherall Aluminum Products Co. v. Scott, *supra*; but see Beley v. Municipal Court for the Judicial District of Ventura County (1979) 100 Cal.App.3d 5, 9 [160 Cal.Rptr. 508, 510] (seller was entitled to quantum merit recovery where buyer cancelled only after sizeable remodeling contract had been substantially completed over a long period of time).
34. CC § 1689.11(c).
35. CC § 1689.11(a).
36. CC § 1689.10(c).
37. CC §§ 1689.11(a),(b).
38. B&P § 17511.5(e), CC § 1689.5. See People v. Toomey (1984) 157 Cal.App.3d 1, 13-14 [203 Cal.Rptr. 642, 650].
39. B&P § 17511.5(e)(1)(A).
40. B&P §§ 17511.5(e)(1)(B).
41. B&P § 17511.5(e)(1)(B).
42. B&P §§ 17511.5(e)(1)(A),(2); CC § 1689.6(a).
43. B&P § 17511.5(e).
44. CC § 1689.6(f).
45. CC § 1689.7(d).
46. See CC §§ 1689.7(a)(2),(d) for required language in the contract notice and the Notice of Cancellation form.
47. CC § 1689.6(a).
48. CC § 1689(b)(1).
49. CC §§ 1689(b)(2)-(4).

**NOTICE OF CANCELLATION --
STATUTORILY-REQUIRED LANGUAGE
(CC § 16897.(c))**

"Notice of Cancellation"

enter date of transaction
_____ [Date] _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to [name of seller] , [address of seller's place of business] _____ not later than midnight of [date] _____.

I hereby cancel this transaction _____ [Date] _____
_____ (Buyer's signature)